

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 01**

**PODS ENTERPRISES, LLC**

**and**

**INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, LOCAL 25**

**Cases 01-CA-159835  
01-CA-161140  
01-CA-161523**

**RESPONDENT'S FIRST REQUEST TO POSTPONE THE HEARING**

Respondent PODS Enterprises, LLC ("PODS"), pursuant to Section 102.16(a) of the Rules and Regulations of the National Labor Relations Board, hereby requests that the Regional Director postpone the hearing in the above-captioned matter to November 7, 2016, continuing for consecutive days thereafter.

In support of this Motion, PODS states as follows:

1. On July 5, 2016, PODS received the Complaint and Notice of Hearing issued by the Regional Director in this case ("Complaint"). The Complaint notices the hearing to begin on August 9, 2016.
2. As an initial matter, given the breadth of the Complaint, the short time before the hearing is insufficient. The Complaint includes almost a hundred distinct allegations of unlawful conduct. The allegations involve numerous PODS managers, some located at PODS's headquarters in Florida, and others here in Boston. Moreover, all of the PODS managers in Florida have prescheduled vacations between now and the noticed hearing. The only manager who does not have a prescheduled vacation in July is David Blamy; however, Mr. Blamy's availability is substantially limited because PODS is in the midst of its busy season in the Boston market.

3. Accordingly, on July 13, 2016, undersigned Counsel for the Respondent contacted Counsel for the General Counsel, Emily Goldman, requesting agreement to postponement of the hearing until November 2016. Counsel for the General Counsel would not agree to a postponement until November 2016. Further, on July 14, 2016, the undersigned Counsel for the Respondent contacted Counsel for the International Brotherhood of Teamsters, Local 25 (“Union”), Nicholas Chalupa, concerning postponement of hearing. To date, Mr. Chalupa has not returned the undersigned’s telephone call.

4. In communications that followed, Counsel Goldman established that a longer postponement is required under to Board Rule 102.16(a)(2), which provides for postponement: “Where a new charge or charges have been filed which, if meritorious, might be appropriate for consolidation with the pending complaint.”

5. As of now, the Complaint encompasses three charges that were filed by the Union, between September 11, 2015, and October 8, 2015. The Complaint does not encompass two charges that the Union filed against PODS in June 2016, Cases 01-CA-178782 and 01-CA-177518.

6. The investigations of those charges are ongoing. The Region sent its first request for information regarding Case 01-CA-178782 on June 16, 2016. On July 15, 2016, PODS responded to the June 16 request. At the time the Complaint was issued, the Region had not sent a request for information regarding 01-CA-177518.

7. The Region did not request any information regarding Case 01-CA-177518 until July 13, 2013. Just minutes after PODS had sought a postponement, Counsel Goldman emailed the attached letter to Counsel for the Respondent. *See Attachment A.* In this letter, Counsel Goldman — in her capacity as a Field Attorney this time — requests that PODS provide

responsive information by “Wednesday July 30, 2016.” (July 30 is actually a Saturday.) There are only six business days between July 30 and the currently noticed start of the hearing, August 9.

8. During a follow-up email exchange later on July 13, Counsel Goldman indicated that the Region plans to consolidate 01-CA-178782 and 01-CA-177518 with the pending Complaint, if they are found to be meritorious during the investigation. *See* Attachment B. Counsel for Respondent requested confirmation that there was no plan to consolidate the cases, and Counsel Goldman replied: “The Region will make that determination based on the outcome of those two investigations.” *Id.*

9. Given that representation, an extension long enough for the Region to complete its investigation is proper under Board Rule 102.16(a)(2). PODS seeks an extension until November 7 specifically for the following reasons. One, the Region should be able to complete its investigation within three months. Two, PODS is a highly seasonal business, and its busy season runs from Summer into late Fall. November 7 is the earliest date that would not cause substantial disruption to PODS. Three, Counsel for Respondent has several pending matters that prevents a hearing before November 7, including a trial scheduled to begin on September 14, 2016 in Hudson County, New Jersey in the matter of *Robert Milloul v. Knight Capital Group, Inc., et al.*, Docket No. HUD-L-2913-13. The trial in *Robert Milloul v. Knight Capital Group, Inc., et al.* is expected to last four weeks.

10. Although Ms. Goldman refused to agree to a postponement of the hearing until November 2016, she did not make a claim of substantial prejudice should the hearing be postponed.

WHEREFORE, Respondent PODS ENTERPRISES, LLC respectfully requests that the hearing dates commencing on August 9, 2016 be stricken and the Regional Director reschedule the hearing to commence the week of November 7, 2016 and continuing for consecutive days thereafter.

**DATED: July 15, 2016**

Respectfully submitted,



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William F. Dugan  
wdugan@seyfarth.com  
SEYFARTH SHAW LLP  
131 S. Dearborn Street, Suite 2400  
Chicago, Illinois 60603  
Tel: (312) 460-5000  
Fax: (312) 460-7000

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that he caused the foregoing Respondent's First Request for Postponement of the Hearing to be electronically filed with the National Labor Relations Board this 15th day of July, 2016, and also caused a true copy to be served by first class U.S. mail upon the following counsel of record:

John J. Walsh Jr.  
Regional Director  
National Labor Relations Board, Region 1  
Thomas P. O'Neil Jr. Federal Building  
10 Causeway Street, 6th Floor  
Boston, Massachusetts 02222-1001

Nicholas Chalupa, Attorney  
Teamsters Local 25  
177 Milk Street, Suite 300  
Feinberg, Campbell & Zack, P.C.  
Boston, Massachusetts 02109-3408

Bradley Raymond, Attorney  
International Brotherhood of Teamsters  
25 Louisiana Avenue NW  
Washington, DC 20001-2130



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William F. Dugan

# **ATTACHMENT A**



UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

REGION 1  
10 Causeway St Fl 6  
Boston, MA 02222-1001

Agency Website: [www.nlr.gov](http://www.nlr.gov)  
Telephone: (617)565-6700  
Fax: (617)565-6725

Agent's Direct Dial: (617)565-6734

July 13, 2016

William Dugan  
Seyfarth Shaw  
131 S. Dearborn Street, Suite 2400  
Chicago, IL 60603

Re: PODS  
Case 01-CA-178782

Dear Attorney Dugan:

I have been assigned to investigate the unfair labor practice charge filed by Teamsters, Local 25 involving the alleged unlawful discharge of Stephen Levine. It is now necessary for me to take evidence from you regarding the allegations in the charge.

**Allegations:** I am seeking a position statement and your evidence regarding the Union's allegation that Levine was fired in retaliation for his Union activity.

**Board Affidavits:** I am requesting to take affidavits from Dave Blamy, Laureen Druker, and any other individuals you believe have information relevant to the investigation of the above-captioned matter. Please be advised that the failure to present representatives who would appear to have information relevant to the investigation of this matter, for the purposes of my taking sworn statements from them, constitutes less than complete cooperation in the investigation of the charge.

**Documents:** Please provide the following documents, along with any and all other evidence you deem to be relevant to the case:

1. Complete personnel file of Steve Levine, including any documents not included in his personnel file that relate to his employment with PODS.<sup>1</sup>
2. Documents, including but not limited to witness statements, text or email messages, or other communications between managers, supervisors and/or drivers, company policies and/or other documents that:
  - a. PODS relied upon in reaching its decision to terminate Steve Levine; and/or
  - b. refer or relate to, or explain, PODS' decision to terminate Levine;

<sup>1</sup> Since PODS produced a copy of Mr. Levine's personnel file on or about December 15, 2015, I am requesting all documents not produced at that time, including but not limited to documents related to his discharge.

- c. refer or relate to, or explain the timing of that decision.
3. PODS policies in effect at any time between December 1, 2013 and present with respect to employees who receive traffic citations or tickets for incidents occurring on either work or personal time, in either personally-owned or company vehicles.
4. Moving violations, citations, or violations resulting from DOT inspections issued to Levine, whether issued to him while on or off-duty, during his employment at PODS.
5. Documents by which Levine reported any moving violation or citation to any PODS management representative, pursuant to PODS' Notification of Citations and DOT Inspection Violations policy.
6. Documents, including but not limited to text or email messages or other communications between managers, that refer or relate to Steve Levine's suspected or actual Union or protected, concerted activity.
7. For every driver who has been *disciplined and/or discharged* by PODS Northeast, for any reason, between December 1, 2012 and present, please provide:
  - a. Name, address and telephone number;
  - b. Dates of employment;
  - c. Reason for separation, if no longer employed;
  - d. Reason for discipline or discharge, and related documentation;
  - e. Personnel file.<sup>2</sup>
8. Identify each and every driver for PODS Northeast who has received one or more traffic tickets or citations (for a moving violation), whether on work time or personal time, in a company or personally-owned vehicle, between December 1, 2012 and present, and for each such driver, please provide:
  - a. Name, address and telephone number;
  - b. Dates of employment;
  - c. Reason for separation, if no longer employed;
  - d. Documents that describe, refer or relate to the incident that prompted the citation or ticket;
  - e. Documents that refer or relate to or describe the driver's driving record; and
  - f. Documents that refer or relate to or describe any actual or contemplated discipline of the driver;
  - g. In the absence of disciplinary action, documents that refer or relate to or describe PODS' reasons for failing to discipline the driver for the incident.

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<sup>2</sup> To the extent that responsive information for a particular individual has already been produced to the Region, please indicate that in your response.

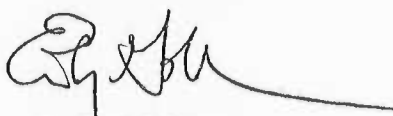
July 13, 2016

**Position on 10(j) Relief:** You are also requested to provide your position as to the appropriateness of Section 10(j) injunctive relief in this matter. As you may know, Section 10(j) of the Act permits the NLRB to ask a federal district court "for appropriate temporary relief or restraining order" pending the Board's resolution of an unfair labor practice charge. The district court is authorized to grant "such temporary relief or restraining order as it deems just and proper." If the Region determines the Charged Party has violated the Act as alleged, the Region will consider whether to seek injunctive relief in this matter. Accordingly, please provide your position, legal theory, case law, and supporting evidence regarding whether injunctive relief would be appropriate for the alleged violations in this case and whether such injunctive relief would be just and proper. I wish to emphasize that the Region has not yet made a decision as to whether the Charged Party has violated the Act as alleged. Rather, we want to provide you with adequate notice that injunctive relief will be considered if such a decision is made

**Date for Submitting Evidence:** To resolve this matter as expeditiously as possible, you must provide your evidence and position in this matter by no later than the close of business on Wednesday, July 30, 2016. If you are willing to allow me to take affidavits, please contact me immediately to schedule a time to take affidavits. Electronic filing of position statements and documentary evidence through the Agency website is preferred but not required. To file electronically, go to [www.nlr.gov](http://www.nlr.gov), select **E-File Documents**, enter the **NLRB case number**, and follow the detailed instructions. If I have not received all your evidence by the due date or spoken with you and agreed to another date, it will be necessary for me to make my recommendations based upon the information available to me at that time.

Please note that my telephone number changed recently. Feel free to contact me at your earliest convenience at (857) 317-7808, or e-mail, [emily.goldman@nlrb.gov](mailto:emily.goldman@nlrb.gov), so that we can discuss how you would like to provide evidence and I can answer any questions you have with regard to the issues in this matter.

Very truly yours,



Emily Goldman  
Field Attorney

# **ATTACHMENT B**

## Mateja, Lynne

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**From:** Dugan, William  
**Sent:** Friday, July 15, 2016 3:58 PM  
**To:** Mateja, Lynne  
**Subject:** FW: PODS Enterprises, LLC

### William Dugan

Chicago | Ext: 735933 (+1-312-460-5933)  
wdugan@seyfarth.com

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**From:** Goldman, Emily G. [mailto:Emily.Goldman@nlrb.gov]  
**Sent:** Wednesday, July 13, 2016 2:33 PM  
**To:** Dugan, William  
**Cc:** Fein, Daniel F.  
**Subject:** RE: PODS Enterprises, LLC

Bill,

I cannot confirm at this time whether or not the Regional Director will at some point seek to amend the complaint to add the discharge allegations contained in cases 01-CA-177518 and 01-CA-178782. The Region will make that determination based on the outcome of those two investigations. If you feel this is an issue that should be considered in granting or denying a postponement request, I would recommend that you include those arguments in your motion.

With respect to your question about whether there was a drafting error with respect to the complaint allegations concerning Joel Kaplan's discharge, I can confirm that there was, indeed, such an error. We intended to plead his discharge as an 8(a)(3) violation and will amend the complaint accordingly.

Emily Goldman

National Labor Relations Board

Region 1

Thomas P. O'Neill Federal Building

10 Causeway Street, Room 601

Boston, MA 02222-9935

Phone: (857) 317-7808

Mobile phone: (202) 674-1305

Fax: (617) 565-6725

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**E-File:**

The NLRB has converted to an electronic file system. The NLRB strongly encourages all parties to file electronically,

through its online E-File system, all substantive documents presented to the Agency. Please select the appropriate link to access the Agency's E-File system:

- E-File <https://apps.nlr.gov/eservice/efileterm.aspx>
- E-File new Charge/Petition <https://apps.nlr.gov/eservice/efileterm.aspx?app=chargeandpetition>

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**From:** Dugan, William [<mailto:WDugan@seyfarth.com>]

**Sent:** Wednesday, July 13, 2016 2:22 PM

**To:** Goldman, Emily G. <[Emily.Goldman@nlrb.gov](mailto:Emily.Goldman@nlrb.gov)>

**Subject:** PODS Enterprises, LLC

Emily,

I write following-up on some issues that came up during our call earlier today.

1. Please confirm that the General Counsel has decided that, irrespective of the outcome of the pending investigations, it will not seek to consolidate with the pending Complaint either of the two charges that were recently filed by the Union: 01-CA-177518, which alleges Ron Nadeau was "constructively discharged" on January 20, 2016; and 01-CA-178782, which alleges Steven Levine was terminated for Union activity on December 23, 2015. As you know, the Region's investigations regarding these charges are ongoing. Indeed, just today, PODS received the request for information related to 01-CA-178781.

PODS submits that both charges have no merit and, moreover, that even if there were merit to either charge, it would not be appropriate to consolidate either with the pending complaint. If the General Counsel believes otherwise, it must say so now. Even if the General Counsel has not decided whether or not it would seek to consolidate those charges with the pending complaint, then the hearing should be postponed. NLRB Rule Section 102.16(a)(2) provides that there is grounds to postpone a hearing "Where a new charge or charges have been filed which, if meritorious, might be appropriate for consolidation with the pending complaint."

If PODS does not receive notice by COB July 14 that the General Counsel may seek to consolidate either charge with the pending Complaint, PODS will take that as an affirmative representation that the General Counsel will not do so later.

2. The Complaint does not allege that PODS terminated Joel Kaplan in violation of Section 8(a)(3) of the Act, and it does not seek back pay or reinstatement as a remedy for his termination. However, today you inquired whether PODS would be willing to reinstate Mr. Kaplan and provide him with back pay, which does not make sense given the Complaint allegations and remedies sought. If PODS is misreading the Complaint, or if there was a drafting error, please let me know immediately.

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I look forward to hearing from you.

Regards,

**William Dugan** | Seyfarth Shaw LLP  
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SEYFARTH  
SHAW

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